

AMENDED IN SENATE MAY 10, 2005
AMENDED IN SENATE APRIL 25, 2005
AMENDED IN SENATE APRIL 18, 2005

SENATE BILL

No. 1088

Introduced by Senator Bowen

February 22, 2005

An act to ~~add Section 216 to~~ *amend Section 1818 of, and to add Section 216 to*, the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

SB 1088, as amended, Bowen. Family law: motions and orders.

Existing law prohibits ex parte communications involving certain administrative proceedings.

This bill would prohibit, in the absence of a stipulation to the contrary, ex parte communications between court-appointed mediators or evaluators and the court, and between court-appointed mediators or evaluators and any attorney for a party to an action. The bill would also prohibit an attorney or party from initiating oral communication pertaining to the merits of the case with, or providing documents pertaining to the case to, an evaluator or mediator without taking specified action. *The bill would provide specified exceptions from these provisions.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 216 is added to the Family Code, to
2 read:

216. (a) In the absence of a stipulation by the parties to the contrary, there shall be no ex parte communication between the attorneys for any party to an action and any court-appointed evaluator or mediator, or between a court-appointed evaluator or mediator and the court, in any proceedings under this code. Absent stipulation by the parties to the contrary, no attorney or party to an action may initiate oral communication pertaining to the merits of the case with an evaluator or mediator without first providing all parties, including any attorney of record for a child, an opportunity to be present, and no attorney or party to an action may provide an evaluator or mediator with documents pertaining to the case without first providing the attorney for any other party, including any attorney of record for a child, a copy of the document.

(b) There shall be no ex parte communications between counsel appointed by the court pursuant to Section 3150 and any court-appointed evaluator or mediator, except where it is expressly authorized by the court or undertaken pursuant to paragraph (5) of subdivision (c) of Section 3151.

(c) Subdivisions (a) and (b) shall not apply in ~~either of the~~ following situations:

(1) To allow a mediator or evaluator to address a case involving allegations of domestic violence.

(2) *As set forth in Sections 3113, 3181, and 3192.*

(3) Where the mediator or evaluator determines that ex parte communication is necessary to prevent an imminent risk to the child's or party's safety or well-being.

SEC. 2. Section 1818 of the Family Code is amended to read:

1818. (a) All superior court hearings or conferences in proceedings under this part shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. ~~Conferences may be held with each party and the party's counsel separately and in the discretion of the judge, commissioner, or counselor conducting the conference or hearing, counsel for one party may be excluded when the adverse party is present. The court shall not allow ex parte communications, except as authorized by Section 216.~~ All communications, verbal or written, from parties to the judge, commissioner, or counselor in a proceeding under this part shall

1 be deemed to be official information within the meaning of
2 Section 1040 of the Evidence Code.
3 (b) The files of the family conciliation court shall be closed.
4 The petition, supporting affidavit, conciliation agreement, and
5 any court order made in the matter may be opened to inspection
6 by a party or the party's counsel upon the written authority of the
7 judge of the family conciliation court.

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